

## PATENT

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Claims 1-27 and 29-39 are pending in the present application, of which, Claims 1, 16, 24, 27, 29, and 33 are independent.

*Improper Restriction Requirement*

Although an election to one of the alleged inventions has been made herein below, it is respectfully submitted that the Restriction Requirement dated June 1, 2006 is clearly improper and should be withdrawn for at least the following reasons.

Initially, the Restriction Requirement made in the Official Action dated June 1, 2006 is the second Restriction Requirement made on the present application. The first Restriction Requirement, mailed on August 18, 2005, was withdrawn as noted in the Official Action dated November 30, 2005. In addition, the November 30, 2005 Official Action indicated that all of the pending claims, Claims 1-39 were examined, as noted in the rejections set forth in that Official Action.

The Restriction Requirement is improper because it fails to meet the requirements of a proper restriction as set forth in MPEP § 803. Section 803 of the MPEP indicates that "[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions." Emphasis added.

In the instant case, the Examiner has unequivocally proven that all of the claims in the present application can be searched and examined without serious burden, as evidenced by

## PATENT

Atty Docket No.: 200310137-1

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the fact that the Examiner has already examined all of the pending claims as noted in the Official Action dated November 30, 2005. Clearly, therefore, the Restriction Requirement fails to meet the requirements set forth in MPEP 803 and should be withdrawn.

The June 1, 2006 Official Action asserts that the remarks submitted by the Applicants "have prompted the presentation of a new restriction..." It is not at all clear as to how the response submitted by the Applicants on February 28, 2006 prompted the new Restriction Requirement because in that response, Applicants merely amended independent Claim 27 to include the features of canceled Claim 28. Applicants also submitted arguments asserting that the purported rejections were improper as failing to disclose almost all of the features claimed in Claims 1-27 and 29-39.

For at least the foregoing reasons, even assuming for the sake of argument that the present application includes claims directed to patentably distinct species, the Restriction Requirement is clearly improper because all of the claims have already been searched and examined by the Examiner. The Examiner is therefore respectfully requested to withdraw the Restriction Requirement.

*The Official Action Has Improperly Construed Applicants' Arguments*

In the second paragraph of the June 1, 2006 Official Action, the Examiner states that "[t]he species are independent or distinct because Applicant asserts that the substitute of one kind of detective sensor for the other detective sensor is improper." It is respectfully submitted that Applicants did not make such an assertion in the Response to Office Action dated February 28, 2006. Instead, Applicants argued that the Official Action dated November 30, 2005 failed to provide any suggestion or motivation to modify the Chibou et al. (JP 2,078,848) document to use any other type of sensor than what is shown therein. In

**PATENT**

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

addition, Applicants presented arguments against a possible modification to Chibou et al. to include the various types of sensors in the present invention. As such, the Applicants presented arguments against modifying Chibou et al. and not to assert that the substitution of the various sensor types claimed in the present invention is improper.

For at least the foregoing reasons, it is respectfully submitted that the Official Action has misconstrued Applicants' arguments as a basis for issuing this second Restriction Requirement.

**Restriction Requirement**

The Official Action asserts that the present application contains claims that are directed to four patentably distinct species. As defined in the Official Action, these species are:

Species I: "detective device comprises sensor with liquid crystal";

Species II: "detective device comprises metallic foils and liquid crystal coating";

Species III: "detective device comprises mercury thermometer or bimetallic spring thermometer"; and

Species IV: "detective device comprises substrate".

A requirement to elect a single disclosed species of the four alleged species has been imposed on the basis that the above-identified species are allegedly patentably distinct from each other. In addition, the Official Action alleges that no claim is generic.

In response to that election of species requirement, Applicants hereby elect, with traverse, Species I of the invention. Claims 1-4, 7-11, 13-26, and 29-39 are readable on the elected species. In addition, Claims 1, 2, 7-11, 13-20, 22-26, and 29-39 are considered to be generic to all of the alleged Species I-IV.

## PATENT

Atty Docket No.: 200310137-1

App. Ser. No.: 10/628,369

Although an election has been made in response to the Official Action, Applicants respectfully traverse the Restriction Requirement for at least the reasons set forth herein above.

Conclusion

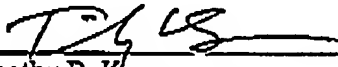
In light of the foregoing, withdrawal of the restriction requirement and examination of all of the claims of this application are respectfully requested.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the above-identified application, please contact the undersigned at the telephone number listed below.

Respectfully submitted,

Dated: June 30, 2006

By

  
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